



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2005-0022]

TÜV SÜD Product Services GmbH: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to expand the scope of recognition for TÜV SÜD Product Services GmbH, as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: Meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3655, Washington, DC 20210; telephone: (202) 693-2110; email: robinson.kevin@dol.gov. OSHA's web page includes

information about the NRTL Program (see <http://www.osha.gov/dts/otpc/nrtl/index.html>).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of TÜV SÜD Product Services GmbH (TUVPSG), as an NRTL. TUVPSG's expansion covers the addition of one recognized testing and certification site to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the Federal Register in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details its scope of recognition. These pages are available from the Agency's web site at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

TUVPSG submitted an application, dated February 5, 2013 (OSHA-2005-0022-0007), to expand its recognition to include the addition of one recognized testing and

certification site located at: TUVPSG Garching, Daimlerstrasse 11, D-85748 Garching, Germany. OSHA staff performed a detailed analysis of the application and other pertinent information. OSHA staff also performed an on-site review of TUVPSG's Garching testing and certification facility on April 26, 2013, and recommended expansion of TUVPSG's recognition to include this one site.

OSHA published the preliminary notice announcing TUVPSG's expansion application in the Federal Register on May 27, 2014 (79 FR 30181). The Agency requested comments by June 11, 2014. OSHA received three comments regarding TUVPSG's request to expand its scope of recognition (OSHA-2005-0022-0008, OSHA-2005-0022-0009, and OSHA-2005-0022-0010).

The first anonymous comment (OSHA-2005-0022-0008) asked whether the decision to expand TUVPSG's scope was good for a local trade union of construction workers. However, the comment offers no information about the issue on which OSHA sought comment – TUVPSG's request to expand its recognition, and OSHA does not consider it further.

The remaining comments from the National Electrical Manufacturers Association (NEMA) and the Information Technology Industry Council (ITI) (OSHA-2005-0022-0009 and OSHA-2005-0022-0010, respectively) assert that German law requires German conformity assessment bodies, authorized as GS Bodies, to reside within Germany, and that this requirement does not provide "equal treatment" as outlined in OSHA's NRTL regulations and policies.

OSHA's NRTL regulations (29 CFR 1910.7 – Appendix A I.A.1.b) require OSHA to consider, prior to granting initial recognition of organizations located outside of the

United States, “the policy of the foreign government regarding both the acceptance in that country of testing data, equipment acceptances, and listings, and labeling, which are provided through nationally recognized testing laboratories..., and the accessibility to government recognition or a similar system in that country by U.S.-based safety-related testing agencies.” OSHA conducted a review of Germany’s policies toward U.S.-based testing and certification organizations in 2001, when TUVPSG was initially recognized by OSHA as an NRTL. At that time, U.S.-based organizations were treated no less favorably than other testing and certification organizations seeking accreditation in Germany. OSHA regulations require a review of foreign government practices for initial recognition, and not for renewal or expansion applications, as requested by TUVPSG. As this is an application for expansion, there is no basis in OSHA regulations to reconsider how German law treats U.S.-based testing and certification organizations. However, the information provided by NEMA and ITI raises questions with respect to the provision of equal treatment of foreign conformity assessment bodies. As such, OSHA has requested the Office of the U.S. Trade Representative (USTR) to review this matter.

To obtain or review copies of all public documents pertaining to TUVPSG’s application, go to www.regulations.gov or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-2625, Washington, DC 20210. Docket No. OSHA-2005-0022 contains all materials in the record concerning TUVPSG’s recognition.

II. Final Decision and Order

OSHA staff examined TUVPSG’s expansion application, conducted a detailed on-site assessment, and examined other pertinent information. Based on its review of this evidence, OSHA finds that TUVPSG meets the requirements of 29 CFR 1910.7 for

expansion of its recognition, subject to the limitation and conditions listed below.

OSHA, therefore, is proceeding with this final notice to grant TUVPSG's scope of recognition. OSHA limits the expansion of TUVPSG's recognition to include the site at TUVPSG Garching (Garching, Germany), as listed above. OSHA's recognition of this site limits TUVPSG to performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for the test standards in TUVPSG's scope of recognition. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, TUVPSG must abide by the following conditions of the recognition:

1. TUVPSG must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);
2. TUVPSG must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. TUVPSG must continue to meet the requirements for recognition, including all previously published conditions on TUVPSG's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of TUVPSG, subject to the limitation and conditions specified above.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on October 10, 2014.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

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